

1 Honorable Robert S. Lasnik
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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

9 NATIONSTAR MORTGAGE LLC, as
10 successor in interest to AURORA LOAN
SERVICES LLC

NO. 2:13-cv-01245-RSL

11 Plaintiff,

PLAINTIFF'S MOTION FOR ORDER
AUTHORIZING SERVICE BY
PUBLICATION ON DEFENDANT
CLARENCE ROLAND

12 vs.

NOTE ON MOTION CALENDAR:
AUGUST 28, 2013

13 DREXEL INVESTMENTS INC., SUNEET
DIWAN, JARED HUYETT, DREXEL
14 INVESTMENTS LLC, EASTSIDE
FUNDING LLC, NATIONAL RECOVERY
15 REO SERVICES INC., a Delaware
Corporation, CLARENCE ROLAND, TRINA
16 Y. JACOBS, ARLANDO RAY JACOBS, and
17 DOE DEFENDANTS 1 through 20,

18 Defendants

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20 I. RELIEF REQUESTED
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22 Plaintiff moves the Court for an order authorizing service of the Summons by
23 publication upon Defendants Clarence Roland and Arlando Ray Jacobs.
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25 PLAINTIFF'S MOTION FOR ORDER
AUTHORIZING SERVICE ON ROLAND
AND JACOBS BY PUBLICATION- 1
Case No.: 2:13-cv-01245-RSL

BISHOP, WHITE, MARSHALL & WEIBEL, P.S.
720 OLIVE WAY, SUITE 1201
SEATTLE, WASHINGTON 98101-1801
(206) 622-5306 FAX: 206/622-0354

II. STATEMENT OF FACTS

Clarence Roland formerly resided in Pierce County, Washington and possibly King County, Washington. Mr. Roland is known to have lived and conducted business at the following addresses until at least early 2013: 3802 Spyglass Dr. NE, Tacoma, Pierce County, WA98422, and 11415 SE 67th Pl., Bellevue, King County, WA 98006-6411. Declaration of Adam G. Hughes, ¶ 3. Service was attempted on Mr. Roland through a process server at both addresses, but Mr. Roland was confirmed to no longer reside at either address. *Id.* at ¶4, Ex. 1. Plaintiff's counsel's office has conducted research into the current whereabouts of Clarence Roland and has been unable to locate him. *Id.* at ¶5.

Arlando Ray Jacobs formerly resided at 3306 Claremont Avenue, Seattle, Washington 98144 (the property at issue in this litigation) with his then wife Trina Y. Jacobs. Trina Y. Jacobs is now believed to be deceased. The most recent addresses that could be found for Arlando Ray Jacobs were 16720 STUEBNER AIRLINE RD SPRING TX 77379-7318, 7312 LOUETTA RD STE B118 PMB 206 SPRING TX 77379-6175, and 6102 RACHELS CT KATY TX 77494-8229. Service was attempted at each of these addresses, but the process server(s) reported that Mr. Jacobs no longer resides at any of these addresses. *See* Hughes Decl. at ¶6, Ex. 2.

III. ISSUES PRESENTED

Whether the Court should issue an order authorizing service of the summons and complaint by publication upon Clarence Roland and Arlando Ray Jacobs as provided by FRCP 4(e)(1) and RCW 4.28.100.

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1 IV. EVIDENCE RELIED UPON

2 This motion is based upon the pleadings filed herein, the Declaration of Adam G.
3 Hughes, and the exhibits attached thereto, which are submitted herewith.

4 V. LEGAL AUTHORITY

5 Federal Rule of Civil Procedure 4(e)(1) provides as follows:

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7 (e) SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES.
8 Unless federal law provides otherwise, an individual—other than a minor, an
9 incompetent person, or a person whose waiver has been filed—may be served in a
10 judicial district of the United States by:

11 (1) following state law for serving a summons in an action brought in courts
12 of general jurisdiction in the state where the district court is located or where
13 service is made;

14 Accordingly, Washington law applies here to the service issue at hand. The
15 circumstances which justify service by publication in Washington are set forth in RCW
16 4.28.100, which provides:

17 When the defendant cannot be found within the state, and upon the
18 filing of an affidavit of the plaintiff, his or her agent, or attorney, with
19 the clerk of the court, stating that he or she believes that the defendant
20 is not a resident of the state, or cannot be found therein... stating the
21 existence of one of the cases hereinafter specified, the service may be
22 made by publication of the summons, by the plaintiff or his or her
23 attorney in any of the following cases:

24 (2) where the defendant, being a resident of this state, had departed
25 therefrom with intent to defraud his or her creditors, or to avoid the
26 service of a summons, or keeps himself or herself concealed therein
27 with like intent;

28 (6) When the subject of the action is real or personal property in this
29 state, and the defendant has or claims a lien or interest, actual or
30 constructive;

1 contingent, therein, or the relief demanded consists wholly, or partly,
2 in excluding the defendant from any interest or lien therein;

3 (9) When the action is brought ... to determine conflicting claims to
4 property in this state.

5 Stated another way, “RCW 4.28.100(2) authorizes service by publication when the
6 defendant cannot be found in the state, and, with the intent to avoid service of a summons,
7 he either conceals himself within the state or leaves the state. The plaintiff must also have
8 made reasonably diligent efforts to personally serve the defendant.” *Boes v. Bisiar*, 122
9 Wn.App. 569, 574, 94 P.3d 975 (2004) (citation omitted).

10 In this case, Plaintiff’s counsel has researched numerous sources to locate current
11 addresses for Clarence Roland and Arlando Ray Jacobs. Unfortunately, those efforts have
12 not been successful. In the course of that research, Plaintiff’s counsel discovered that
13 Clarence Roland was successfully served at the 3802 Spyglass Dr. NE address in
14 September 2012 as part of similar lawsuit in King County Superior Court in Washington
15 State (Case Number: 12-2-28523-3). As determined by the process server who attempted
16 to serve Mr. Roland at that same address in this case, however, Mr. Roland has since
17 moved to an unknown address. Similarly, the process server who attempted to serve
18 Mr. Jacobs also learned that Mr. Jacobs had moved to an unknown address. No additional
19 address information for either of these defendants can be found at this time.

20 These efforts support a finding that Plaintiff has exercised reasonable diligence in
21 its efforts to locate Clarence Roland and Arlando Ray Jacobs and to personally serve them.
22 Furthermore, the Court may infer that Clarence Roland and Arlando Ray Jacobs, with the
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1 intent to avoid service, have either concealed themselves or left the state. Based upon the
2 foregoing, Plaintiff respectfully requests that this Court allow service by publication on
3 defendants Clarence Roland and Arlando Ray Jacobs.

4 VI. PROPOSED ORDER

5 A proposed Order is submitted herewith.

6 Dated this 28th day of August, 2013.

7 /s/Adam G. Hughes
8 Adam G. Hughes, WSBA #34438
9 BISHOP, WHITE, MARSHALL & WEIBEL, P.S.
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Email: ahughes@bwmlegal.com
11 Attorneys for Plaintiff

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14 CERTIFICATE OF SERVICE

15 I hereby certify that on August 28, 2013 I electronically filed the foregoing Motion to
16 Serve by Publication with the Clerk of the Court using the CM/ECF system which will send
17 notification of such filing to the following:

18 Alisson H. Wall [] By United States Mail
REHMKE & FLYNN, PLLC [] By CM/ECF System
917 Pacific Ave, Suite 407 [] By Federal Express
Tacoma, WA 98402 [] By Facsimile
E: alisson@rehmkeandflynn.com
19 *Attorneys for Defendants Drexel*
20 *Investments Inc., Suneet Diwan, Jared*
21 *Huyett, and Drexel Investments LLC*

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1
2 Thomas F. Peterson
3 SOCIUS LAW GROUP, PLLC
4 601 Union Street, Suite 4950
5 Seattle, WA 98101
6 E: tpeterson@sociuslaw.com

[] By United States Mail
[] By CM/ECF System
[] By Federal Express
[] By Facsimile

*Attorneys for Defendant Eastside Funding
LLC*

Dated this 28th day of August, 2013.

7 /s/Kay Spading
8 Kay Spading, Legal Assistant
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